

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, CR 14-0094

-against-

JOSEPH VALERIO,  
Defendant.

U.S. Courthouse  
Central Islip, NY

March 6, 2014  
2:30 p.m.

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TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE JOSEPH F. BIANCO  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government: LORETTA E. LYNCH  
United States Attorney  
100 Federal Plaza  
Central Islip, NY 11722  
By: ALLEN BODE, ESQ.  
Assistant U.S. Attorney

For the Defendant: ANTHONY LAPINTA, ESQ.  
LEONARD LATO, ESQ.

Court Reporter: Owen M. Wicker, R.P.R.  
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Proceedings recorded by mechanical stenography; transcript  
produced by computer transcription.

Proceedings

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1 THE COURT: Why don't we call the case. United  
2 States versus Joseph Valerio, 14-94.

3 MR. BODE: Allen Bode for the Government, your  
4 Honor.

5 MR. LaPINTA: Appearing for Mr. Valerio, Anthony  
6 LaPinta, and also present, cocounsel Leonard Lato.

7 THE COURT: Good afternoon. And Mr. Valerio is  
8 present as well.

9 MR. BODE: While we're waiting for the copy to  
10 come, I'll hand up to Court two things I will reference  
11 and was previously before Magistrate Tomlinson and  
12 Magistrate Brown. One is a description from the PSR of  
13 the prior offense, the attempt of forcible touching by  
14 Mr. Valerio, and the second is a log of his interactions  
15 with the probation report which I'll be referring to.

16 So the Court is aware, the most recent stuff is  
17 on page 1 and the oldest stuff is on the last page.

18 THE COURT: Okay.

19 So I think we'll try to do two things today. I  
20 think the first thing, obviously there has been a  
21 superseding indictment, so if your client is prepared to  
22 be arraigned on that and then go to the bail issue?

23 MR. LaPINTA: Yes.

24 THE COURT: Have you received a copy of the  
25 superseding indictment?

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1 THE DEFENDANT: Yes.

2 THE COURT: Have you had time to discuss it with  
3 your attorney and discuss it for purposes of arraignment?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Do you waive the entire reading of  
6 the superseding indictment?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: How do you plead: Guilty or not  
9 guilty?

10 THE DEFENDANT: Not guilty.

11 THE COURT: A not guilty plea has been entered,  
12 so we'll proceed to the bail hearing.

13 Because a prior determination of this Court was  
14 based on concept without prejudice to renewal, I'm  
15 treating this de novo, and therefore the Government has  
16 the burden.

17 And if Mr. Bode can outline his position.

18 MR. BODE: Yes, your Honor.

19 As the Court is aware, this is a crime of  
20 violence pursuant to the Bail Reform Act, so there is a  
21 presumption here. In terms of the burden, as the Court  
22 is, I'm sure, aware, the Government is alleging the  
23 defendant is a danger to the community and a risk of  
24 flight.

25 As a danger to the community, I have to show to

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1 the Court by clear and convincing evidence, and as to  
2 flight, by a preponderance.

3 In terms of the factors: nature and  
4 circumstance of the crime charged; the weight and evidence  
5 against the defendant; his history and characteristics,  
6 including family ties, flight, financial resources,  
7 community ties, past conduct; and then the nature and  
8 seriousness of the danger to the community if he is  
9 released.

10 I'll start with the danger to the community.

11 The Government asserts Mr. Valerio is so  
12 dangerous there are no conditions or combination of  
13 conditions other than incarceration that can sufficiently  
14 protect the public here. We believe pretrial's  
15 recommendation there is no such combination of conditions  
16 is correct. As such, there is no need for the Court to  
17 even look at the sufficiency of the package in terms of  
18 flight, but I'll address that later as well.

19 Regarding the history and characteristics, I'll  
20 start with Mr. Valerio's substantial history which shows  
21 his long-standing predatory behavior.

22 One thing to note at the start, I'm not going to  
23 rely, your Honor, upon the ex parte rule of protection  
24 history that the defense referenced. Magistrate Brown, in  
25 finding the defendant was a danger, didn't rely on that,

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1 and I will not rely on it at this point either. So I'll  
2 start with his misdemeanor conviction.

3 From the PSR description, your Honor, that  
4 conviction, misdemeanor, for attempted forcible touching,  
5 he groped a woman's genitals at a water park.  
6 Following -- as is set forth in that PSR, following his  
7 allocution, Mr. Valerio lied, denied the conduct and later  
8 again came around, reinterviewed and admitted his conduct  
9 again, which is a pattern of Mr. Valerio in terms of his  
10 lying, which, as I'll get to in a moment, would make him  
11 not susceptible to pretrial monitoring.

12 Once he was on probation, as you can see in the  
13 description, there are numerous times he was caught lying.  
14 He was also caught hiding contraband. It is detailed in  
15 the notes. He hid videos of women that he had filmed  
16 surreptitiously undressing in a basement crawl space. He  
17 hid them from Probation. That is a habit of his as well,  
18 hiding things, hiding contraband.

19 He was never prosecuted for that conduct because  
20 it was beyond the statute of limitations.

21 The reason why that is particularly  
22 interesting -- that was discovered in 2006 -- it was  
23 beyond the statute of limitations, which would be five  
24 years in New York. So we're talking about his predatory  
25 behavior, being over the course of at least a 13-year

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1 period, brings us to 2014. A long-standing personality  
2 disorder involving Mr. Valerio, your Honor.

3 As you can see, he had knives, dummy pistols and  
4 a rifle hidden in a garage. He consistently lied to his  
5 probation officer monitoring him. Only because of  
6 polygraphing did he finally admit he photographed  
7 underaged girls, in their mid-teens, and also admitted  
8 sexual contact with a minor babysitter.

9 He continues to lie and manipulate. Those words  
10 are through the entire probation period of monitoring.

11 Ingrained behavior. Over that 13-year period it  
12 has gotten worse. In fact, his victims have gotten  
13 younger. He cannot be expected to cooperate with pretrial  
14 monitoring.

15 Prior to learning about the victim that  
16 Mr. Valerio photographed in his basement, Mr. Valerio was  
17 released by Magistrate Tomlinson on strict electronic  
18 monitoring with sex offender treatment. He immediately  
19 started lying to Dr. DeSantis, the doctor he was seeing  
20 for pretrial. He told her he was only charged with child  
21 pornography possession. He was charged with production.

22 There was a three-year-old that was being  
23 molested. He was involved with respect to the conduct  
24 involving Jane Doe number two, where he was leaving the  
25 office where he was admonished for lying to her.

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1           There are two separate victims here. It's not  
2 an isolated incident. The age of the victims, they are  
3 egregious, two and six. These are not older children.  
4 He's taking advantage of the utterly defenseless.

5           As to the three-year-old victim, there are  
6 numerous e-mails over the course of time requesting sex  
7 acts be done on the three-year-old child and the  
8 accompanying videos then coming back to Mr. Valerio via  
9 e-mail to his computer. There were 20 videos, all  
10 recovered from his computer here in Smithtown. All the  
11 accompanying e-mails requesting the acts be done to the  
12 three-year-old were recovered as well.

13           THE COURT: Looking at the defense letter -- and  
14 they suggested the Government may not be able to prove  
15 that the abuse occurred at his direction.

16           You are saying based upon the timing of the  
17 e-mails and videos, you would be able to prove it  
18 circumstantially.

19           MR. BODE: Slowly, based on what is on the  
20 computer, your Honor, absolutely.

21           THE COURT: Okay.

22           MR. BODE: As to the six-year-old victim,  
23 Mr. Valerio built a stage in his basement. He hid a  
24 camera in the floor. He hid a camera in the ceiling. He  
25 hid a camera in the clock on the wall. Three different

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1 cameras located in the second search warrant which was  
2 issued in this case.

3 This was not a spur-of-the-moment event. This  
4 was well thought out. Although he had deleted the video  
5 from the SD card, so that the stills remained, you could  
6 see that they are in sequence; that he dressed this child  
7 in fetish outfits, cheerleader outfits, other items which  
8 were recovered in the secondary search warrant as well as  
9 in addition to recovering the cameras.

10 Regarding the three-year-old victim, I would  
11 also note in terms of the strength of the case, initially  
12 Mr. Valerio confessed and admitted that conduct, your  
13 Honor. So based on his confession, the videos, the case  
14 would be provable solely based on the evidence  
15 recoverable. It's a strong case.

16 Upon learning he was being rearrested for  
17 filming the six-year-old, Mr. Valerio said in front of the  
18 FBI agents: I feel like killing myself. And he  
19 indicated: I don't have a family anymore.

20 The Government would assert as well, any  
21 suicidal feelings on the part of Mr. Valerio create a  
22 substantial danger to the public. People who intend to  
23 kill themselves have no consequence to their actions.  
24 There is nothing to stop him from harming a child.

25 The mandatory minimum here of 15 years for each



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1 of the production counts amplifies the danger.

2 Mr. Valerio is 47 years old with a history of  
3 thyroid cancer. The statutory minimum is 15 years and a  
4 maximum of 30 years in prison for each of the production  
5 counts.

6 The Government's statement of Mr. Valerio,  
7 guidelines are 360 months to life imprisonment. There's a  
8 high likelihood that Mr. Valerio will be incarcerated for  
9 a substantial portion of the rest of his life. There is  
10 no legal ramifications for him to cause harm to the public  
11 were he to be released. He would not be in any worse  
12 position legally than he is now.

13 And then I would note particularly in  
14 Mr. Valerio's case, the online danger here is great.

15 In this case Mr. Valerio was perpetrating the  
16 abuse of the three-year-old through another party, the  
17 mother of the child, overseas, online. His behavior was  
18 solely online in that case as to that child.

19 This Court has recognized in United States  
20 versus Reiner, 468 F.Supp.2d 393, from this district in  
21 2006: In the child pornography context, dangerousness  
22 includes the ability if the defendant is released on bail  
23 to attempt additional child pornography or to communicate  
24 or to interact via internet, e-mail or phone with others  
25 involved in the possession, sale and distribution of child

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1 pornography or other sexual abuse of children, which would  
2 create a clear danger by facilitating the criminal and  
3 dangerous exploitation of children by other individuals.

4 The danger here isn't just that Mr. Valerio  
5 could clip off the GPS monitor and harm a child but also  
6 must encompass online dangers as well.

7 In this case Mr. Valerio has a very  
8 long-standing history of hiding contraband, going back to  
9 hiding the videos in a basement crawl space, to even more  
10 recent hiding three different cameras in the basements of  
11 the location where the six-year-old was photographed. So  
12 Mr. Valerio could easily hide a cell phone in any number  
13 of places which would allow him to contact others online  
14 and continue the abuse online. That danger can only  
15 effectively be dealt with by detention.

16 He previously acted in the case of the  
17 three-year-old through a surrogate to have that  
18 three-year-old molested.

19 In terms of the nature and the seriousness of  
20 the danger posed by the defendant, the Government submits  
21 there is no package that sufficiently can deal with those  
22 dangers. The suretors proposed here are insufficient, as  
23 Mr. LaPinta indicated at the prior bail hearing in front  
24 of Judge Brown that the defendant's mother has cognitive  
25 deficits. She's not a sufficient suretor, especially to

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1 be the primary suretor.

2 I would note in terms of the bail package, I'll  
3 reserve a reply as to what is exactly being proposed, your  
4 Honor, but I would note in terms of the dollar amount of  
5 the package, at this point you can see from the  
6 superseding indictments the Government has brought a  
7 forfeiture count as to Mr. Valerio's residence, so that  
8 does decrease the amount of the property for the suretors.

9 In terms of the cases cited by the defense, your  
10 Honor -- and I have to apologize. I didn't get a chance  
11 to write anything in response. It came in late yesterday.  
12 The Thomas case which was cited in the defense letter,  
13 there's an error in the defense letter in that that  
14 case -- I think it is listed as 2013. It is actually a  
15 2006 case. And the conduct in Thomas dated all the way  
16 back to 2003, I would note.

17 So I would submit in Thomas that defendant had  
18 engaged in others online. I submit the Thomas case, being  
19 10 or 11 years old at this point, did not sufficiently  
20 account for the online danger which your Honor has  
21 recognized in the Reiner case.

22 I would also note in terms of Thomas, the  
23 defendant Thomas didn't have the same history that  
24 Mr. Valerio has in hiding contraband, the cameras in his  
25 basement, the prior videos he had hid in the basement, and

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1 have the backing of the surrogates to have the child  
2 abused.

3 In terms of the Second Circuit authority, I  
4 would note in the Orena case, 986 F.2d 628, in terms of  
5 the Second Circuit here, in terms of Orena, the Second  
6 Circuit rejected a request, in essence, for the defendant  
7 to be incarcerated in his home, stating that these  
8 conditions would at best elaborately replicate the  
9 defendant's detention facility without the confidence of  
10 security such a facility instills.

11 Safety of the community will be assured only if  
12 the Government provides trustee-trained staff to carry out  
13 the extensive monitoring of homes, telephone and travel  
14 that would be necessary to ensure compliance with the  
15 conditions of bail.

16 If staff were not provided, protection of the  
17 community would be largely left to the word or the motto  
18 that he will obey the conditions. We find nothing in the  
19 Bail Reform Act that requires the Government to allow home  
20 detention or allow dangerous defendants to be at large  
21 based on their promise not to violate the conditions of  
22 bail.

23 In addition, I would note the Supreme Court --  
24 the Second Circuit recently addressed Orena in an  
25 unpublished decision, United States versus Baig, at 536

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1 Fed.Apex 91, stating in United States v. Orena: We  
2 expressed serious reservation about the casualties for  
3 home confinement as a substitute for detention in cases  
4 involving violent crime -- which this is, your Honor --  
5 noting problems of adequately monitoring and staffing home  
6 confinement conditions. We do not retreat from those  
7 views.

8 Then they go on to distinguish the case here  
9 from Orena.

10 I would also note there's a footnote 18 which  
11 case the Government has not argued: ...and therefore we  
12 have no occasion to consider whether it would be contrary  
13 to the principles of detention and release on bail to  
14 allow wealthy defendants to buy their way out by  
15 constructing a private jail. We note, however, that in  
16 the instant case the defendants lacking the resources to  
17 flee might have been granted bail in the first place.

18 So to the extent that I need to preserve -- and  
19 I'll make that argument as well, that Mr. Valerio -- the  
20 proposal that I expect to hear from the defense in essence  
21 would be Mr. Valerio trying to, as a wealthy defendant,  
22 buy his way out by making himself a private jail. And I  
23 submit in any event that the private jail option, I  
24 expect, would not sufficiently account for online danger  
25 from a small electronic device which easily could access

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1 the internet.

2 Turning to risk of flight, your Honor, I would  
3 note the crime here charged involves one of the most  
4 serious penalties available in district court: 15 years  
5 minimum, as I said, 30 years maximum. There are two  
6 separate victims. Guidelines are 360 to life.

7 Mr. Valerio is 47 and has prior cancer. Given  
8 all those serious penalties he faces, there is clearly a  
9 preponderance that there is a flight risk here. He has  
10 shown disdain for probation monitoring previously, and his  
11 mother, we submit, is unfit to be a surety.

12 Thank you.

13 THE COURT: Okay. Thank you, Mr. Bode.

14 I'll hear from Mr. LaPinta.

15 Yes, sir.

16 MR. LaPINTA: Good afternoon, your Honor.

17 THE COURT: Good afternoon.

18 MR. LaPINTA: Your Honor, let me begin by  
19 stating the obvious. This is a child pornography case.  
20 This is not a child rape case. This is not a child sexual  
21 contact case. This is a case involving photographs or  
22 videos of children.

23 It is a serious case, obviously. It is a  
24 troubling case. However, the bail package that I'm about  
25 to present to you, I would assert, is unprecedented in

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1 this district and extraordinary in light of the  
2 circumstances involved in the allegations and the ability  
3 of a defendant to provide and address all of the bail  
4 factors enunciated in 3142.

5 Mr. Bode has done an adequate job explaining the  
6 law, and I don't need to do that. I know that you know  
7 that better than anybody here.

8 Clearly a presumption case. However, the  
9 defendant has the ability to rebut the presumption. The  
10 Government has the burden of persuasion by clear and  
11 convincing evidence. The Government has a limited burden  
12 of production and not persuasion.

13 Let me address the factors in 3142, the nature  
14 and consequences of the crimes charged.

15 Once again, no doubt, these are very serious and  
16 troubling allegations. However, the first series of  
17 allegations involving the crime is overseas, in Ukraine.  
18 The defendant is an aider and abettor. He's alleged to  
19 have communicated certain directives that the mother of  
20 this child carried out.

21 The mother of this child is the principal actor.  
22 She's located thousands of miles away. The victim in this  
23 case is thousands of miles away. There is no realistic  
24 opportunity for the defendant to have any contact with  
25 this child. And I'll mention in a bit other reasons why I

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1 would assert that.

2 The instrumentality used to carry out that crime  
3 was a computer. No physical contact made by my client at  
4 all.

5 Second series of allegations. The allegations  
6 are alleged to have taken place three years ago, not  
7 recent. They were videos that were obtained in a camera  
8 that were previously deleted. We don't know when they  
9 were deleted. They could have been deleted a minute after  
10 they were taken. It could have been deleted a day before  
11 the FBI found them, a day before my client was arrested.  
12 We don't know that. The instrumentality here is a camera;  
13 no physical contact is alleged.

14 I will address this.

15 There is no language in the initial complaint  
16 about physical contact because there was redness on the  
17 child's buttocks observed. And the agent goes on to opine  
18 that that was a product of spanking, and also taking a  
19 step beyond by saying it was done for sexual gratification  
20 and physical contact obviously being made. That is at  
21 best speculation.

22 There's not much different in the allegations  
23 containing the Ukraine incident or the incident alleged to  
24 have taken place in my client's basement. The  
25 instrumentality of the Ukraine was a computer. The



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1 instrumentality of the local charge was a camera.  
2 Computer mouse was clicked. The camera was clicked to  
3 take the video. No physical contact is alleged by my  
4 client.

5 Two, the weight of the evidence against the  
6 defendant.

7 I understand Mr. Bode's allegations, his opinion  
8 about the evidence, the fact that he feels that he could  
9 prove this case beyond a reasonable doubt, a doubt merely  
10 by the e-mails and the videos.

11 My understanding of the allegations here, your  
12 Honor, was that these videos are not time-stamped or dated  
13 in any manner. And the e-mails that accompany these  
14 videos do have dates, but I think the essence of really  
15 the production charge is when those videos were made and  
16 whether they were made as a direct consequence of my  
17 client's request that they be made. That is the essence  
18 of the production charge.

19 So insofar as proving guilt beyond a reasonable  
20 doubt regarding production, I would say that the principal  
21 actor's involvement would be an important one. It may not  
22 be necessary, but it may be important.

23 Obtaining her to participate in this case, in  
24 light of the problems in the Ukraine, the civil war that  
25 is taking place, may be very problematic for the

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1 Government in sustaining their burden in going forward in  
2 this case. My understanding of it is she is not in  
3 custody. She is not somebody I would think would be a  
4 willing participant to surrender herself.

5 There is no extradition agreement with Ukraine.  
6 I feel the Government would have monumental problems in  
7 having brought this jurisdiction to be either charged as a  
8 codefendant or to be used as a cooperating witness in the  
9 case against Mr. Valerio.

10 The more recent charges. The minor victim in  
11 the basement.

12 Once again, deleted video. No allegation that  
13 the video or photographs were disseminated. No  
14 allegations that they were reproduced or transported in  
15 any way.

16 The child victim here, when interviewed by law  
17 enforcement, did not say that Mr. Valerio took those  
18 pictures of her. And I understand the psychological  
19 impact that child sex victims may have, and I understand  
20 all of that. But what we have here, for whatever reason,  
21 whether it is denial, whether it is production or whether  
22 it is actual innocence on behalf of my client, we don't  
23 have the allegation made by the child that Mr. Valerio was  
24 the one that did photograph her in the fashion she was  
25 photographed.

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1 History and characteristics of the defendant.

2 You should know, your Honor, that my client is  
3 47 years of age. He was born in New York City. His  
4 family, mother and father, are both Sicilian immigrants.  
5 They bought a home in Queens when he was age six and moved  
6 to Massapequa when he was a young child. Actually, I  
7 misspoke. Lived in Queens previously and moved to  
8 Massapequa when he was age six. They bought their first  
9 family home then, and they resided in their family home in  
10 Massapequa since, I believe, my client's sixth birthday.

11 He attended the Massapequa public school  
12 district. He attended from the first grade to the twelfth  
13 grade, and he graduated from Vernon High School in 1985.

14 After graduating from high school, he attended  
15 studies at Nassau Community College. He took classes at  
16 what is called an institution, that was previously called  
17 the New Center, where he studied massage therapy.

18 He left college to work for his family business.  
19 His father developed a marble/granite import/export  
20 company. They established that business in Massapequa.  
21 He left school to work with his father.

22 His father, his uncle, built that business up to  
23 a very prominent business. He worked hand in hand in  
24 developing that business. That business was sold in 2003.  
25 And by virtue of hard work and devotion, his father has

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1 the benefit of numerous assets that they are willing to  
2 post to secure Mr. Valerio's release.

3 Before I get to that package of assets, let me  
4 also explain that besides working for the family business  
5 from 1986 to 2003, my client has also been involved and  
6 has been very successful in real estate investment  
7 ventures, both of a commercial and residential nature.  
8 The family are devout Catholics. He's a parishioner of  
9 the St. Joseph's Roman Catholic Church in Smithtown.

10 He is divorced for the past six years. He has  
11 an 18-year-old son that attends college away from home.  
12 His mother resides in Massapequa since 1988. His father  
13 passed away in 2010. His father's loss has been  
14 devastating to the family, and my client has assumed the  
15 role, basically, as the leader, emotionally, financially,  
16 and has been a provider for his mother and sister since  
17 the death of their father in 2010.

18 His sister is present in court here today along  
19 with her husband, and also my client's mother is present  
20 as well.

21 Let me outline the assets that we have  
22 previously submitted and approved by Magistrate Tomlinson.

23 The first property is Mrs. Valerio's property,  
24 the mother. That property is located in Massapequa. She  
25 has substantial assets, equity value, in that property.

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1 She has executed a confession of judgment that was filed  
2 with the Nassau County Clerk's Office.

3 The second property is his sister's property  
4 that they've owned for a number of years. They also have  
5 significant equity involved. A confession of judgment has  
6 also been filed in the Nassau County Clerk's Office.

7 My client has a property in Smithtown that has  
8 an equity value of roughly \$800,000. We filed a  
9 confession of judgment with the Suffolk County clerk  
10 regarding that property.

11 And there are two other commercial properties  
12 owned by the family. One is a commercial property located  
13 on Broadway in Massapequa that previously housed the  
14 family company of granite, tile and marble. That business  
15 is ongoing since it was sold to other relatives that have  
16 continued the business and occupy that premises as the  
17 primary tenants.

18 Also, there are other commercial tenants in that  
19 building that does throw off a significant rent roll.  
20 That property has been tendered, and a confession of  
21 judgment has been filed in the Suffolk County Clerk's  
22 Office.

23 Lastly, the family owns a residential property  
24 in the Hamptons they've owned for a number of years. A  
25 confession of judgment has been filed in the Suffolk

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1 County Clerk's Office in that regard, which has  
2 substantial value.

3 The total conservative value of equity for all  
4 of those property is \$3.25 million.

5 Now, what is important to note, your Honor, is  
6 that these are not distant relatives. These people are my  
7 client's immediate family. This is what they own. This  
8 is what his father has worked so hard to provide for his  
9 family. And to think that my client would jeopardize or  
10 risk his family losing all of these assets and to not come  
11 to court here would be unrealistic and totally not the  
12 case.

13 My client has significant health issues. He's  
14 previously diagnosed with cancer. He had operative  
15 surgery that removed one half of his thyroid. He's  
16 undergoing continuous care to monitor that cancer.

17 His mother has had health issues. Suffered an  
18 aneurism in 2009. She is medicated. I'm willing to  
19 provide the Court with all medical records on behalf of  
20 his mother to show that she does have the ability to be a  
21 proper supervisor. She's here in court today.

22 I've had an incredibly close relationship with  
23 her since the onset of these criminal charges, and albeit  
24 I'm not a doctor, I'm not a psychologist, I'm not a  
25 psychiatrist, but I will tell you that this woman is more

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1 than capable of understanding what is happening. She is  
2 astute. She has asked tremendously relevant questions.  
3 She understands the proceedings, she is reliable, and she  
4 is more than adequate as a supervisor for my client.

5 His sister is also present in court. I've also  
6 had a long-standing relationship with her on a continuous  
7 basis since the onset of these charges, and she is more  
8 than apt to be a supervisor and to undertake obligations  
9 by the Court of whatever capacity you feel necessary to  
10 assist in this bail package.

11 His brother-in-law is also in court here today.  
12 He understands the nature of the charges, is willing to  
13 post his house, as I previously said, and is more than  
14 cable of being a supervisor in this instance as well.

15 My client has never once indicated to me any  
16 type of suicidal ideation. He has not even appeared to  
17 me -- once again, I'm not an expert in this area -- has  
18 never appeared to me to be distressed, despondent,  
19 depressed in any manner.

20 There are no coconspirators here for him to act  
21 together with, to further the production of child  
22 pornography or to secret cell phones to him so he can  
23 advance his fetish of child pornography, as the Government  
24 would suggest. The only person he has alleged to have  
25 acted with is 3,000 miles away from this Court.

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1           My client does have a prior criminal record,  
2       albeit for the minor crime of a B misdemeanor, the least  
3       serious crime noted in the Penal Law in New York State.  
4       He did serve one year of probation pursuant to a bargain  
5       for disposition. You have the probationary notes present  
6       there. I've reviewed them.

7           I will tell the Court that there were never any  
8       violations filed against my client. He was never  
9       penalized or sanctioned in any way for violating  
10      probation. He completed probation. He never served a  
11      term of incarceration on this matter, understanding the  
12      nature of that charge and also understanding that it is a  
13      fact that's the most minor crime that the New York State  
14      Penal Law has on its books.

15          The nature and seriousness of the danger of the  
16      community and to the individual. I'm repeating myself,  
17      and I will be brief.

18          The victim in the first allegation of said  
19      defenses is well beyond the reach of the defendant.

20          The victim in the second allegation. We'll make  
21      part of this bail package that no minors under the age of  
22      18 will ever be permitted in the Valerio residence in  
23      Massapequa.

24          Let me articulate what I would categorize as  
25      probably the most extraordinary bail package that could be



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1 presented on any case, albeit a case of this nature.

2 In addition to having the proposed properties  
3 I've mentioned filed already totaling \$3.25 million, we  
4 have gone to the length of having the premises, the  
5 Valerio premises in Massapequa, equipped with  
6 state-of-the-art surveillance system that is recording  
7 every perimeter or area outside of the property. It is  
8 equipped in the fashion that provides the FBI with live  
9 feed of the video. We made sure that that specific  
10 security system was approved by the FBI.

11 Prior to my client being released on bail, a  
12 home search was conducted by the FBI and also pretrial  
13 services. The security system was investigated,  
14 evaluated. The brains of the system, so to speak, the  
15 computer of the system, is held in a locked box in a  
16 locked room. It has a power surge that will allow for  
17 continuous recording if there is electrical outage. If  
18 there is such an electrical outage, the FBI will be  
19 notified immediately of that.

20 We have agreed to enormous conditions regarding  
21 home confinement, having my client equipped with not only  
22 an ankle bracelet but one that is monitored by GPS. We've  
23 agreed that the residence would not house a computer or  
24 any other electronic device - cell phone, iPad, no  
25 internet access of any sort as well.

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1           We've agreed to have my client present, be  
2 present, at pretrial services anytime that the Court would  
3 feel comfortable with, whether it is on a weekly basis,  
4 biweekly basis or otherwise.

5           We will agree to random home searches and visits  
6 by not only pretrial services but also the FBI, anytime of  
7 day or night.

8           As I previously explained, we will agree no  
9 child under the age of 18 will be permitted inside that  
10 house.

11           Alcohol and narcotics condition are a foregone  
12 conclusion.

13           Pretrial services has previously interviewed and  
14 screened people that will be residing with my client and  
15 who will be having direct contact with him. I will go a  
16 step beyond that and offer to the Court a list of people  
17 that will only be permitted to enter into that house, and  
18 I will tell the Court that anyone else besides people on  
19 that list will not be permitted to enter that house under  
20 any circumstance, unless previously approved by the Court.

21           Over and above those extreme conditions, we've  
22 reached out to and have secured a security company that is  
23 capable of providing 24-hour, seven-day-a-week security of  
24 the Valerio residence.

25           The principal of that security company is

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1 present in court. He's available for inquiry by the Court  
2 of any question you deem appropriate; that you may inquire  
3 to satisfy the Court that, one, they are not only licensed  
4 in New York State to perform security, two, they are  
5 bonded. They have extreme experience in this regard, and  
6 they have worked hand in hand with law enforcement - FBI,  
7 state and local police - on numerous occasions in the  
8 past.

9 The persons that would be responsible for  
10 actually securing the premises are all loyal personnel  
11 that have been screened and have been long-standing  
12 employees of the company.

13 We are willing to have every person that enters  
14 and exits the house searched, pat-down searched, sign in a  
15 log.

16 We are more than willing to have security  
17 personnel have constant contact with the FBI.

18 We're willing to have the security company make  
19 their records available to the FBI at any given time, even  
20 randomly if necessary.

21 We are willing to have a direct line to the FBI  
22 if there is something that goes awry so they are aware of  
23 it instantaneously.

24 The package that I'm presenting to you, your  
25 Honor, is unprecedented and extraordinary. There are no

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1 other assurances that could be possibly offered to the  
2 Court in this regard; as substantial of a bail package as  
3 anyone can put together.

4 Denying this package would be tantamount to  
5 saying that defendant charged with these crimes, child  
6 porn crimes, nontouching, noncontact crimes, could never  
7 be released on bail.

8 Lastly, I have the suretors present in court.  
9 There has been a change in circumstances since they've  
10 signed the surety bond. There has been other charges  
11 presented. They are aware of those charges, and they are  
12 more than willing to continue offering their properties as  
13 bail in this regard.

14 With that said, I thank you for your time.

15 THE COURT: Let me ask you a couple questions.

16 Do you want to talk to Mr. LaPinta for a second,  
17 Mr. Lato?

18 MR. LATO: Yes, your Honor.

19 Your Honor, may we have two minutes, please?

20 THE COURT: Sure.

21 MR. LaPINTA: Your Honor, with your permission,  
22 I'll have Mr. Lato address some other conditions.

23 THE COURT: Yes.

24 MR. LATO: Plus, Mr. LaPinta is losing his  
25 voice, so it might be easier. And I want to rebut some of

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1 the things that Mr. Bode has said.

2           However repugnant the crimes, as the Court  
3 stated in Madoff, we must look forward. And in terms of  
4 bail, it is whether the defendant is currently a risk of  
5 flight, currently a danger to the community, and does this  
6 substantial bail package, looking forward, reasonably  
7 assure the safety of the community and guard against the  
8 risk of flight.

9           Mr. Bode talks about the defense have all of  
10 these assets and can buy his way out. Mr. Bode's argument  
11 on that point is irrelevant. There is no such thing as a  
12 reverse equal protection argument, that if poor people  
13 have to stay in, so does a wealthier person.

14           If this bail package is big enough to reasonably  
15 assure the safety of the community and reasonably guard  
16 against the risk of flight, if the Court finds that, the  
17 Court must release him irrespective of how unfair that  
18 would be to people of lesser means.

19           Mr. Bode cites Orena. That case, as I stated in  
20 the letter to the Court, is also irrelevant because Orena  
21 and those line of cases deal with organized crime bosses  
22 who, by virtue of having a conversation, can order a hit  
23 on another person. Or jury tampering. That is not this  
24 type of a case.

25           Cell phones and computers. There are none in

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1 the house that is always subject to search by the FBI,  
2 with the video cameras and the live feed to the FBI, and  
3 security guard. And I will use the adverb "reasonably,"  
4 or I'll make it an adjective, "reasonable." There is no  
5 reasonable basis to believe that a cell phone or a  
6 computer or a camera can get into the house when every  
7 person who enters that house must be on a preapproved list  
8 and subject to search. Even the mother, the owner of the  
9 home, if she leaves the house, when she comes back in will  
10 be subject to search.

11 There is no reasonable basis to believe that  
12 someone, however creative, can smuggle a camera or a  
13 computer into the house.

14 With respect to the guideline range, perhaps  
15 this is an immaterial point. Mr. Bode says the range is  
16 360 months to life. I come out with a slightly lower  
17 range of 292 to 365 months. That is probably immaterial  
18 in terms of what the Court must consider, but given that I  
19 have a different view, I figured I would just say it.

20 If Mr. Valerio is guilty, this Court is going to  
21 sentence him to a very long jail sentence. That is not a  
22 reason now to deny a person bail if he can reasonably  
23 assure through his package that he will not flee or pose a  
24 danger to the community.

25 THE COURT: I have a couple of questions. I

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1 don't know if you want to answer them, Mr. LaPinta.

2 MR. LaPINTA: Either one. I'll try.

3 THE COURT: On the issue of the weight of the  
4 evidence, you mentioned the issue whether or not the  
5 child, the first child, the three-year-old, whether it is  
6 evidenced in the letter, whether you'll be able to  
7 demonstrate the child was exploited.

8 But my general question is: Mr. Bode proffered  
9 the Government's proof as a whole in terms of the  
10 possession of child pornography - possession, search, the  
11 videos that were recovered - and I haven't heard any  
12 response to that evidence what explanation there is going  
13 to be for all the other evidence in the case, other than  
14 whether or not the child was exploited before or after  
15 requests were made for images.

16 What is your defense for the rest of the case?

17 MR. LaPINTA: One moment, please.

18 (Counsel confer.)

19 MR. LATO: Your Honor, just so I understand the  
20 question, or that we do, is your Honor questioning can we  
21 rebut the claim that the video in the Ukraine were done in  
22 response to the defendant's direction --

23 THE COURT: I understand you believe -- and you  
24 may be able to dispute that, they will not be able to  
25 prove that without the witness, but my question is: With

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1 respect to the rest of the charges in terms of even  
2 possession, receipt of the images, what is your defense to  
3 that part of the case?

4 MR. LATO: The Government has a strong case to  
5 that. There is no question with respect to the receipt of  
6 the images from Ukraine.

7 However, there is no 15-year minimum there. The  
8 minimum there is five years, which makes this a very  
9 different case.

10 THE COURT: What is your response to Mr. Bode  
11 saying that the images don't have time stamps on them;  
12 that he believes it will be clear from what was requested  
13 and what was sent back?

14 MR. BODE: Your Honor, they are attached to  
15 e-mails. He says: Can you do this?

16 She'll send back an e-mail with the kid doing  
17 that.

18 MR. LATO: And that is certainly from Mr. Bode's  
19 standpoint, I understand, an excellent argument, but this  
20 is the give-back. It is going to be very difficult in my  
21 view for a jury to believe that a mother who has never  
22 abused her kid or done any of this, just from 5,000 miles  
23 away, says, sure, I'll make these videos for you.

24 A more likely scenario is the mother has been  
25 doing this for awhile, probably had a library of pictures.



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1 And who is to say whether she has turned over pictures  
2 that she made for the defendant or she already had in her  
3 library.

4 And in my view, we'll never find out for sure  
5 because there is no way this woman will voluntarily come  
6 to the United States.

7 Your argument is, on the weight of the evidence,  
8 the six-year-old victim has denied that the defendant ever  
9 took the pictures?

10 MR. LaPINTA: Yes.

11 MR. LATO: Yes.

12 THE COURT: So again, the Government obviously  
13 has the pictures. They've proffered the camera system  
14 that they found during their search.

15 What is the explanation for it?

16 MR. BODE: If I can, your Honor, before we do  
17 that, so the Court is clear, I don't know if the Court had  
18 a chance to read the complaint. The six-year-old victim  
19 identified the outfit, said the defendant took pictures of  
20 her. And talking about the nonchild pornography pick, but  
21 they are in series. In the later pictures she's  
22 photographed nude.

23 So she has identified those pictures. She did  
24 indicate that the defendant took those pictures.

25 In fact, the parents of the child indicated that

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1 the defendant built the stage --

2 THE COURT: I'm confused. What did she deny?

3 MR. BODE: She was asked "Did he take nude  
4 pictures of you?" and she denied that, which as we  
5 indicated in the complaint is very common of children  
6 abused at such a young age, especially when offenders  
7 often either threaten or coach. It is very common for the  
8 children not to disclose.

9 THE COURT: And you recovered them.

10 MR. BODE: We have the actual images, and they  
11 are in sequence. The parents indicated that the defendant  
12 has indicated to them he was taking modeling pictures of  
13 the defendant as well.

14 MR. LaPINTA: Clothed modeling pictures, your  
15 Honor.

16 THE COURT: But again, circumstantial evidence  
17 that he was involved in those. Who was involved in the  
18 others if it was not him? That is the question. Begin  
19 where they were found, and the sequencing and the other  
20 evidence.

21 MR. BODE: And the hidden cameras, the  
22 explanation for the hidden cameras in the floor, in the  
23 closet --

24 THE COURT: I didn't need help, Mr. Bode.

25 MR. BODE: Sorry, your Honor.

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1 MR. LATO: May I, your Honor?

2 THE COURT: Yes.

3 MR. LATO: The explanation that I can proffer --  
4 and I don't want to get into too much at this point.

5 THE COURT: You don't have to proffer anything.

6 MR. LATO: But I will say the following. There  
7 is no question that the Government's evidence that the  
8 defendant took the pictures of the clothed girl is  
9 insurmountable. There is no question that she admitted  
10 that in the complaint to the agent. But as I stated in my  
11 letter, it is also common for people who have not been  
12 photographed naked to deny they've been photographed  
13 naked.

14 And who is to say that the video or the pictures  
15 were taken by one person or two or three?

16 THE COURT: When the girl denied that he took  
17 the other photographs, did she say who took them if he did  
18 not take them?

19 MR. LATO: I don't know if that was ever asked.

20 MR. BODE: It's a sequence of photos. In the  
21 beginning he took the video of her. She actually  
22 described the camera as well -- same type that were used  
23 to create the images -- and indicated that he had her  
24 dress up in the outfits. And after she described them,  
25 she was showed photos of the outfits found in the basement

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1 as well.

2 MR. BODE: And then she is asked: "Did he ever  
3 take naked photos of you?"

4 She denied.

5 THE COURT: Did she indicate if he did not?

6 MR. BODE: She was asked: "Did he ever take  
7 naked photos of you?"

8 I don't think she was ever asked.

9 MR. LATO: By default, your Honor, the answer  
10 is, no, she was not asked.

11 THE COURT: My other question relates to the  
12 security service. I don't understand -- and I don't need  
13 all the details of it, but how will they follow the  
14 defendant around the house?

15 I understand they will search people who come  
16 in. But will there be a team of security people who  
17 follow him throughout the house, from room to room?

18 MR. LATO: Your Honor, may I have a moment with  
19 Mr. LaPinta?

20 MR. LaPINTA: Your Honor, it's not a system that  
21 will be inside the house. It will be outside the house.

22 THE COURT: You were talking about the camera or  
23 the person?

24 MR. LaPINTA: The person and the camera.

25 THE COURT: I understand the camera. Where is

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1 the person?

2 MR. LaPINTA: The person will be positioned,  
3 presumably in a car, outside the house 24-7, monitoring  
4 who comes in, who comes out, and searching those people.

5 That was a product of Mr. Bode's concern in  
6 reargument before the Court made to Judge Brown, that he  
7 would be concerned people would be bringing cell phones  
8 into the house so he could access --

9 THE COURT: Putting aside that issue, the aspect  
10 of flight, who is preventing anyone coming into the house,  
11 cutting the bracelet off and running away from the house?

12 MR. LaPINTA: Presumably the security guard  
13 outside the house.

14 THE COURT: One guard outside will prevent the  
15 defendant fleeing from any exit and can flee the house?  
16 Doesn't sound very secure to me.

17 MR. LaPINTA: That's a great question.

18 This is a waterfront property. So unless he  
19 jumps in the canal and swims away, there is only one way  
20 getting outside the house: From the front.

21 There's a back door, a front door and garage.  
22 But if you want the security personnel to do perimeter  
23 searches on a regular basis --

24 THE COURT: On this particular point, there is  
25 an issue of flight. GPS and electronic monitoring is

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1 useful, but for someone who wants to flee, I don't  
2 understand how someone can't flee from another exit of the  
3 house.

4 MR. LaPINTA: He has \$3.5 million worth of  
5 reason not to flee, your Honor, and he's not going to  
6 devastate his dear family members in that regard.

7 THE COURT: All right. Mr. Bode --

8 MR. LATO: Your Honor, I just wanted to add --  
9 and Mr. Bode is always free to modify his view. But if I  
10 recall correctly -- and he can correct me if I'm wrong --  
11 that Mr. Bode is proceeding principally on danger to the  
12 community, not on risk of flight, given that realistically  
13 even in the defendant could somehow cut off the bracelet  
14 and run, there is no place -- he couldn't get very far  
15 before he would be caught. The danger aspect is the  
16 issue, your Honor.

17 MR. BODE: Your Honor, what I say is I do rely  
18 on flight, but I don't think we'll ever reach that  
19 question. The danger to the community is such that it  
20 cannot be adequately dealt with by the conditions set  
21 forward here. Because of the danger, we don't need to go  
22 to the issue of flight.

23 You can simply clip off a bracelet. Numerous  
24 ways you can get out of a house that you can't get out of  
25 jail. And in the Northern District, the defendants

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1 clipped off their monitors. And the damages would be more  
2 drastic in a case such as this.

3 Other things that I would mention were mentioned  
4 previously. I would note that the defendant here acts  
5 through surrogates, like Orena. And, frankly, his history  
6 of hiding contraband, of lying to probation officers and  
7 defeating the monitoring is what makes this case such that  
8 the defense cannot rebut the issue.

9 THE COURT: I'll place the Court's ruling on the  
10 record.

11 I've carefully considered the arguments and  
12 submissions of both sides. And having done that -- and  
13 I've looked at this de novo. I know there has been a  
14 history with Judge Tomlinson and Judge Brown, but I'm  
15 looking at this completely fresh, in a de novo review.  
16 And I'm detaining the defendant as a risk of flight and a  
17 danger to the community for the following reasons.

18 First, with respect to danger to the  
19 community -- and this is a presumption case -- I find the  
20 Government has met its burden, even without the  
21 presumption, that the defendant is a danger to the  
22 community by clear and convincing evidence, such that no  
23 conditions or combination of conditions of release,  
24 including the extensive conditions proposed here, can  
25 reasonably assure the safety of the community.

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1 Just going through the factors first, the nature  
2 and circumstances of the crime charged.

3 Extremely serious crimes here, crimes of  
4 violence, aiding and abetting of a woman who sexually  
5 exploits her own child, a three-year-old child, and to  
6 send the videos to the defendant.

7 You have a second series of charges related to  
8 the sexual exploitation to a second child, a six-year-old  
9 girl, in his home. And I emphasize "in his home."

10 The fact that there is not an allegation of  
11 physical contact that the defense argues, in my view, does  
12 not undermine the extreme -- and I underline "extreme" --  
13 danger posed by this type of alleged criminal activity,  
14 with the use of a camera or a computer, can result in the  
15 exploitation of a child, independent of whether or not  
16 that particular defendant physically touched the child.

17 And there are numerous examples of that to even  
18 outline here.

19 I think it is self-evident that in this area of  
20 child pornography, that the instrumentalities of cameras  
21 and computers can result in extreme danger to children, in  
22 a horrific exploitation of children.

23 For that reason I find this to be serious  
24 charges with respect to crimes of violence, an extreme  
25 danger to societies created by this type of alleged



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1 conduct.

2 In terms of the weight of the evidence, given  
3 Mr. Bode's proffer -- and that's why I asked follow-up  
4 questions to defense counsel. I believe this is an  
5 extremely strong case. There are portions of this case  
6 related to the possession of the child pornography for  
7 which I have heard no response in terms of the  
8 Government's overwhelming case, overwhelming evidence with  
9 respect to those.

10 On the issue of whether or not -- to be clear on  
11 that, that the Government has proffered both evidence from  
12 the search, evidence from the search of the home, the  
13 computers, including e-mails, as well as his confession,  
14 and those make this an extremely strong case.

15 In my view, the child's denial with respect to  
16 some of the images, under the circumstances, and other  
17 evidence that the Government has does not seriously  
18 undermine the weight of their case. Nor does the fact  
19 that the Ukraine mother is made unavailable to them, in my  
20 view, in any significant way undermine the other  
21 overwhelming evidence they would proffer with respect to  
22 various aspects of the charges and the conduct in the  
23 case.

24 As far as the history and characteristics of the  
25 defendant, this warrants a finding of danger based on --

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1 not only with respect to the crimes charged but the  
2 attempted forcible touching, although a misdemeanor, in my  
3 view is a serious offense and is heightened given the  
4 particular charges in this case as it relates to this  
5 defendant.

6 So to summarize, in terms of danger, every  
7 single factor, in my view, favors detention based upon  
8 danger to the community. I obviously have analyzed in  
9 great detail whether there are any conditions that I could  
10 think of or is more specifically, even the ones that have  
11 been proposed here, which I certainly agree are extensive.

12 But I just want to say something regarding what  
13 Mr. Lato said: If their defendant didn't get to bail --  
14 maybe it was Mr. LaPinta -- no one who possesses child  
15 pornography will ever get bail.

16 In fact, I have a number of cases where  
17 defendants have been charged with possession of child  
18 pornography who are on bail subject to some of the types  
19 of restrictions they have proposed here.

20 This case is different than those cases. We  
21 have a -- serious as that conduct is, a possession of  
22 child pornography, the conduct alleged here is far more  
23 serious than that, which is the danger which I indicated  
24 in Reiner.

25 On the issue of bail package, as Mr. Bode

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1 pointed out, first of all, the Second Circuit has made  
2 clear in the Orena decision it is not the job of the  
3 Government, the FBI agents, in monitoring cameras 24 hours  
4 a day, that resources be dedicated to that to try to  
5 replicate a jail. In that defendant's case, the Orena  
6 case makes that clear.

7 And that is essentially what the defense is  
8 trying to do, trying to replicate a jail in the home.

9 However, even assuming as Mr. Lato argued today,  
10 the Second Circuit has reserved on if the defendant were  
11 wealthy enough to replicate a jail in his home, he should  
12 be able to do that.

13 Assuming that for present purposes,  
14 notwithstanding Orena, in my view, this is a highly  
15 imperfect replication of a jail on the issue of danger  
16 because, as Mr. Bode noted, given this defendant's past  
17 history that has been proffered in terms of deceitful  
18 conduct, in terms of things hidden in crawl places and  
19 walls, independent search that has been already done in  
20 the home, or could be, doesn't take much to hide a cell  
21 phone or any type of electronic device somewhere in a  
22 home. I don't think one could be certain that one is in  
23 there, in some hidden spot in the home.

24 Even if you went into a list of people who would  
25 come in, are dependent upon each of those persons not

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1 making decisions, even if they don't want the defendant to  
2 harm someone, trying to give him some access to a phone or  
3 electronic device. So you don't have those issues in  
4 jail, where people are visiting or coming into the home.

5 And you are dependent also on a security company  
6 where, even if the FBI has approved previously, is not the  
7 equivalent, in my opinion, of security measures that exist  
8 in a jail for all visitors to prevent such type activity.

9 Given that he can, through the use of a computer  
10 or a cell phone, engage in dangerous activity as relates  
11 to child pornography and related offenses, I don't believe  
12 the proposed package can reasonably assure the safety of  
13 the community, the safety of children in the community,  
14 and for those reasons I find it is inadequate. And I  
15 can't think of any other conditions that would be able to  
16 be added to that package.

17 Also, the defendant would be free in the house.  
18 If there was a computer device or if there was a phone,  
19 there is no ability to know what he's doing in the house  
20 with respect to that once they got in, unlike the jail.

21 On the issue of flight, also, I agree. To me,  
22 the issue of danger is the primary issue in this case.

23 The Government has met its bail package that  
24 those conditions could reasonably assure that this  
25 defendant would appear in court under the factors that

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1 they would apply in this case. He's 47 years old. He's  
2 taking Mr. Lato's calculation of the guidelines. Even in  
3 taking that, he's looking at, in the guidelines, 292  
4 months at the low end, 15-year mandatory minimum.

5 He has health issues. It has been proffered  
6 that he makes statements regarding the desire to kill  
7 himself. And certainly someone in that situation, who has  
8 an extremely strong case against him -- if the defendant  
9 wants to flee, notwithstanding those conditions,  
10 notwithstanding a guy sitting in a car in front of the  
11 house, notwithstanding an electronic bracelet, the  
12 Government would know that a bracelet was cut off. And by  
13 the time they reacted to that, the defendant would be  
14 anywhere he wanted to be. And that might be a very hard  
15 thing, to locate him once he's free of the confines of  
16 that house.

17 So the electronic bracelet and the GPS, because  
18 it can be cut off, is in no way, in my view, to prevent  
19 someone from fleeing.

20 To the extent they argued the 3.2 million  
21 dollars will prevent him from doing so, I don't know what  
22 the defendant's current state of mind is, given what I  
23 just said about how much time he's looking at and the  
24 weight of the evidence against him. I don't know how much  
25 moral suasion his mother and relatives have over him at

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1 this point. There is no way to know whether or not they  
2 have moral suasion, and the money his family would lose  
3 would be enough to prevent him from what I would think  
4 would be an extremely high-risk situation in just deciding  
5 he doesn't want to spend the length of time in jail that  
6 he would be potentially looking at if convicted.

7 For all those reasons, I believe the Government  
8 has met its burden by a preponderance of the evidence that  
9 these conditions and that no conditions can reasonably  
10 assure that he will face the charges in this case, and  
11 therefore I'm detaining defendant, pending trial, upon  
12 those grounds.

13 Obviously, when Mr. Valerio is prepared to go to  
14 trial, you can suggest a date. And I understand he's  
15 obviously in jail awaiting trial, and he can go to trial  
16 as quickly as his attorneys are ready to proceed.

17 MR. LATO: May we just have a moment to consult  
18 with the Government?

19 THE COURT: What do you want to do in terms of a  
20 date going forward?

21 MR. BODE: Judge, the defendant is not waiving.  
22 So if you can put it on for trial on May 12th. Is that  
23 good for the Court?

24 THE COURT: What date do you want?

25 MR. LaPINTA: May 12th, your Honor.

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1 THE COURT: I haven't done the math. That's  
2 within the 60 days?

3 MR. BODE: 60 days would be the 5th of May, so  
4 that is 67 days.

5 THE COURT: You are talking about not from  
6 today?

7 MR. BODE: There was a waiver earlier to today.

8 THE COURT: So the trial is scheduled for  
9 May 12th at 9:30.

10 Obviously, if you want to make motions, you will  
11 figure out a schedule to make motions consistent with that  
12 date.

13 MR. LaPINTA: Do you have any preferences?

14 THE COURT: I don't.

15 MR. LaPINTA: Obviously, if there are issues  
16 that come up and we decide to waive, we'll notify the  
17 Court.

18 THE COURT: Notify me immediately because I'm  
19 reserving that space.

20 MR. BODE: If I could notify the Court orally  
21 that we unseal the search warrants to defense counsel  
22 and --

23 THE COURT: Yes, I grant the motion to unseal  
24 the search warrant application for purposes of producing  
25 the defendant.

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MR. BODE: Thank you.

MR. LaPINTA: Thank you, your Honor.

(Proceedings concluded.)